

Report from EMN Sweden 2014:1

The use of detention and alternatives to detention in the context of immigration policies in Sweden



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Disclaimer: This publication was produced by the Swedish National Contact Point of the European Migration Network (EMN) for public dissemination within Sweden and abroad. It is based on the Swedish contribution to the EMN focused study "Attracting Highly Qualified and Qualified Third-Country Nationals", which was carried out within the framework of the EMN work programme for 2013. The original contribution had the format of a detailed questionnaire. Since this was not considered to be user-friendly, and since several questions did not apply to the Swedish situation and therefore could not be answered appropriately, it was decided that a more reader-friendly format was to be developed, which only included aspects of relevance for the situation in Sweden. The original version of the Swedish contribution to the EMN study can be obtained from the Swedish National Contact Point of the EMN upon request.

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Summary

The Swedish Aliens Act provides for two forms of coercive measures in the migration process: detention and supervision.

There are five detention centres in Sweden, located in Gävle, Märsta, Flen, Kålleröd and Åstorp. The detention centres are operationally run and financed by the Swedish Migration Board within its Division for Reception. As of April 2014, there were 235 places available for detainees in Sweden. Anyone being issued a decision on detention by the police authorities or the migration courts will be detained in these facilities, too.

Basic principles for the treatment of persons who are detained can be found in several sources, e.g. the Swedish Constitution Act, a number of laws and regulations as well as international conventions. Detention under the Aliens Act is addressed in Chapters 10 and 11, regulating on what grounds a person can be detained and how he or she should be treated when in detention. An alien in detention shall be treated humanely and his or her dignity must be respected. The premises and activities related to detention shall be designed in a way that involves the least possible invasion of the alien's privacy and human rights.

Detention should only be used as a last resort in Sweden and only with the purpose to keep the person in question available, either for examination of his or her right to stay, which can only be used for a maximum of 48 hours, or for an enforced return, where the maximum time in detention is longer. According to the Swedish approach, the conditions at detention centres should be similar to those found at reception centres operated by the Swedish Migration Board. The only difference between a reception unit and a detention facility should be that the latter imposes a restriction of movement and that it is not possible to leave the premises.

For enforcement purposes, there is only one alternative to detention in Sweden, supervision. Supervision entails an obligation to report to the police authorities or the Swedish Migration Board at regular intervals.

During 2013, approximately 2,900 persons were detained in Sweden, which is a comparatively small number considering that more than 54,000 asylum seekers came to Sweden in the same year. Given the fact that there are only 235 accommodations available at the detention centres of the Swedish Migration Board, it is obvious that most individuals were detained for relatively short periods of time.

Even though the use of supervision as an alternative to detention is always considered as a first resort, only 405 decisions on supervision were issued during 2013. The reason for this relatively low number can be the fact that the competent authorities use both measures restrictively and only when necessary to enforce a return where there is a risk of the alien to otherwise abscond or in other ways hamper the execution. In those situations a decision on supervision may not be sufficient.

There are several authorities that can issue decisions on detention and supervision. The majority of these decisions are made by the Swedish Migration Board or the police, which in turn consists of 21 regional authorities. A migration court can also issue decisions on these measures. Several authorities are involved in the migration process, depending on how he or she made him/herself known to the authorities and if he or she cooperates with the authorities leading to a voluntary return or not. This also means that a person can be taken into detention several times (for shorter periods) during one year. As a result, annual statistics on detention are not very reliable or easily accessible since decisions can be issued by different authorities at different times. In the statistics available this factor of duplication must be kept in mind.

There have been made a few studies and examinations of detention in recent years. In 2011, a Swedish Governmental Official Report was published looking into the rules on detention and supervision in the Swedish Aliens Act. It proposes, among other things, some clarifications on existing law but this has not yet led to any changes in legislation. The Red Cross performed a study in 2012 on the safeguards available to asylum seekers and concluded that these could be improved. No evaluations have however been made on the efficiency of detention and supervision when it comes to migration and return processes. A study on how these coercive measures contribute to making the migration process more efficient at the same time as the alien's legal safeguards are respected would definitely be of interest.

The aim of this focused study, which is carried out in the framework of the EMN work programme for 2014, is to identify similarities, differences and best practices with regard to the use of detention and alternatives to detention in the context of EU Member States' immigration policies. In particular, the study aims at examining whether, and the extent to which, the use of different 'degrees' of coercive measures that restrict a person's freedom, adapted to the needs of individual cases, contribute to the effectiveness of return policies (in case the person is subject to a return decision) and international protection procedures (in case the person is ultimately allowed to stay in the Member State).

Immigration detention can be seen a non-punitive administrative measure applied by the state to restrict the movement through confinement of an individual in order for another procedure to be implemented. The EU asylum and migration acquis provides that detention is justified in a number of situations, such as preventing unauthorised entry into the territory of a Member State, preventing absconding in return procedures and in conjunction with applications for international protection.

In all cases, EU legislation provides for and encourages the use of alternatives to detention, entailing that detention should be used as a 'last resort'. Alternatives to detention are non-custodial measures that allow individuals to enjoy different degrees of freedom of movement, while agreeing to comply with specified conditions in order to resolve their migration status and/or while awaiting removal from the territory. The alternatives can include regular reporting obligations, the surrender of a financial guarantee or travel documents, electronic monitoring, community management programmes, residence requirements, among others.

In practice, the procedures concerning detention and alternatives to detention vary greatly among EU Member States. While existing information suggests that many countries do not make the best use of alternatives, little is known about the extent to which such alternatives are used and the extent to which detention and alternatives to detention contribute to the effectiveness of return policies and international protection procedures. By analysing Member State policy, legislation and practices in relation to the use of detention and alternatives to detention, the study shall help to identify and compare best practices and possibly contribute to the further development of common standards.

More specifically the study aims to:

- Provide information on the scale of detention and alternatives to detention in each Member State by collecting statistics available on the number of third-country nationals (by category) that are subject to these measures;
- Identify the categories of third-country nationals (e.g. applicants for international protection, rejected international protection applicants, rejected family reunification applicants, persons that have been issued a return decision, other persons found to be illegally present on the territory of (Member) States) that can be subject to detention and/or provided an alternative to detention;
- Compare and contrast the grounds for placing third-country nationals in detention and / or providing alternatives to detention outlined in national legal frameworks, as well as the assessment procedures and criteria used to reach decisions in individual cases;
- Identify and describe the different types of detention facilities and alternatives to detention available and used in (Member) States;
- Collect any evidence of the way detention and alternatives to detention contribute to the effectiveness of return policies and international protection procedures, and identify examples of good practice in this regard.

EU legal and policy context

EU provisions concerning detention stipulate a number of grounds when third country nationals in different migration situations can be detained, as reviewed below. They also identify a variety of procedural guarantees which must be observed by Member States when implementing detention. However, Member States have discretion to decide how to transpose the EU provisions and there are no common guidelines on the operationalization of alternatives to detention. The design, selection, codification and implementation of alternatives to detention are left to EU Member States.

Detention of applicants for international protection

According to Article 18 of the Asylum Procedures Directive (2005/85/EC), it is not acceptable to detain a person solely for the reason that s/he has lodged an asylum application. The EU legal framework has recently been strengthened and consolidated in view of ensuring better and more harmonised protection of fundamental rights with the adoption of the recast of the Reception Conditions Directive (Directive 2013/33/EU). To ensure the non-arbitrariness of detention and the respect of fundamental rights of applicants for international protection, the Directive introduced an exhaustive list of detention grounds (Article 8). A number of procedural guarantees were also put in place, such as the principles of brevity, due diligence and judicial review (Article 9). Further, the recast of the Directive regulates the conditions in detention facilities, such as access to fresh air and communication with lawyers, NGOs and family members (Article 10).

Detention in order to prevent unauthorised entry

The Schengen Borders Code (Regulation 562/2006) requires that third-country nationals who do not fulfil the entry conditions are refused entry into the EU. Article 13(4) stipulates that border guards should prevent irregular entry on the territory of the Member States. To that effect, national provisions in some Member States allow for the short-term detention at the border-crossing point, such as in a transit area of an airport. In addition, the recast of the Reception Conditions Directive (2013/33/EU) provides that an applicant for international protection can be detained upon entry in the territory of the Member State in order to determine the applicant's identity.

Detention of irregular migrants involved in return proceedings

The Return Directive provides common standards for EU Member States to follow in return and removal procedures. According to Article 15 (1) of the Return Directive, detention is permitted in particular in two cases – i.e. when there is a risk of absconding or the third-country national concerned avoids or hampers the preparation of return or removal process. According to the Directive (Recital 16, Article 15(1)), "detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient". Article 15(6) allows Member States to extend detention for an additional 12 months based on either a lack of cooperation by the person concerned or difficulties in obtaining documents from a third State (the latter is a ground that is not related to the behaviour of the person concerned, as opposed to the others).

Detention of applicants for international protection subject to Dublin procedures

Article 28 of new Dublin Regulation No 604/2013, applicable from 1st January 2014, regulates detention for the purpose of transfer. According to the Regulation (Article 28), "when there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively." A single ground for detention, "significant risk of absconding" and a strict time limit for detention are introduced.

Detention of vulnerable persons, minors and persons with specific needs

Under EU law, Article 11 of the Recast of the Reception Conditions Directive provides for the detention of vulnerable persons and persons with special needs. Specific provisions regulate the detention of unaccompanied minors, families, female applicants. Article 17 of the Return Directive provides for the

detention of minors and families stipulating that detention of these categories should be a measure of last resort. Detention of (potential) victims of trafficking in human beings is also outlined in Article 11 of Trafficking Directive (2011/36/ EU).

Primary questions to be addressed by the study

According to the EMN, this study shall focus on the following questions:

- What is the EU legal framework in the domain of immigration detention and how does it relate to the broader international provisions on immigration detention?
- Which categories of third-country nationals can be detained in (Member) States?
- What are the grounds for detention for each category of third-country national and is there an exhaustive list of grounds in national legal frameworks?
- What types of detention facilities exist in (Member) States and what are the conditions of detention in these detention facilities?
- Which alternatives to detention are available in (Member) States?
- What is the practical organisation of alternatives to detention?
- What is the assessment procedure to determine whether a person should be placed in detention or provided an alternative?
- To what extent do detention and alternatives to detention contribute to the effectiveness of (Member) State return policies and international protection procedures?
- How effectively do Member States ensure fundamental rights are respected during periods of detention or where alternatives are applied?

The following Chapters represent the Swedish contribution to this comparative EMN study on detention and alternatives to detention.

2 Provisions and grounds for detention in Sweden

This section aims at providing an overview of the categories of third-country nationals that can be placed in detention in Sweden according to national law and practice.

Detention can be used for different purposes, mainly to prepare or execute an expulsion order or a refusal of entry. It is also used to establish the identity of an asylum seeker. In Sweden, the deprivation of the liberty of a person can never be based on soft law or guidelines; it must always have its ground in law. The legal basis for all placements in detention facilities is the Swedish Aliens Act of 2005.¹ Chapter 1, Section 8, of the Aliens Act states that the Act is to be applied so as not to limit the freedom of aliens more than it is necessary in each individual case. Specific rules on detention and supervision are found in Chapter 10 of the Aliens Act.

Normally, detention is not used in cases in which a person cannot be removed. When there are permanent obstacles to voluntary or forced return, third-country nationals will be granted a residence permit, unless the obstacle to return is due to the behavior of the alien himself/herself. If an obstacle to removal is not considered to be of a permanent nature, the person in question will be contacted by the Swedish Migration Board or the police when it is time to leave the country. If, at that point, there is a risk of absconding, the third-country national will be placed in a detention facility in preparation of executing the return order. In principle, Sweden has a restrictive approach to detention. Rather than being standard procedure in cases of return, it is used as a last resort. Before a decision on detention is taken, it should always be assessed whether supervision can be used instead, as a less drastic measure.

2.1 Applicants for international protection (asylum applicants)

According to Chapter 10, Section 1, 1st paragraph, an alien who has attained the age of 18 may be detained (1) if the alien's identity is unclear on arrival in Sweden or when he or she subsequently applies for a residence permit and he or she cannot establish the probability that the identity he or she has stated is correct and (2) the right of the alien to enter or stay in Sweden cannot be assessed in any other way. This provision can apply, for example, to an asylum seeker who refuses to reveal his or her identity. It applies to applicants in ordinary asylum procedures as well as to persons subject to accelerated procedures. The provision does not mean, however, that all foreigners who do not have passports or identity documents can be detained. If an alien makes probable that their claimed identity is correct a decision on detention will not be taken. A complete proof of identity is not required.

2.2 Rejected asylum applicants

According to Chapter 10, Section 1, 2nd paragraph of the Aliens Act, an alien who has attained the age of 18 may also be detained if it is probable that the alien will be refused entry or expelled or the purpose of detention is to enforce a refusal-of-entry or expulsion order. A detention order may be issued if there is reason on account of the alien's personal situation or other circumstances to assume that he or she may otherwise go into hiding or pursue criminal activities in Sweden. This also applies to persons that try to hamper the enforcement of a removal order. Also asylum seekers that are to be transferred to another country participating in the Dublin regulation can be detained under this provision. If a refusal-of-entry or expulsion order has been issued, the alien may be detained for a maximum of two months, unless there are exceptional grounds for a longer period. An alien who has been served a refusal-of-entry or expulsion order cannot be held longer than twelve month in detention even in cases in which the grounds for the order still exist.

¹ Aliens Act, SFS 2005:716.

2.3 Other categories of immigrants

Detention can also be imposed to enable an investigation to be conducted on the right of an alien to remain in Sweden. In such cases, however, very strong reasons are needed. One may be that it has not been possible to interview the alien during the normal investigation that is made in connection with entry or exit. In practice, in such cases, detention will be used in exceptional circumstances only, e. g. when a large number of aliens arrive at the same time, and it may not last longer than 48 hours. The mere fact that detention would facilitate the procedure for the examining authority is not sufficient. Rejected applicants for family reunification will normally not be placed in detention since their application to join a family member residing in Sweden will normally be examined while the person is still outside Sweden. The same principle applies to other categories of migrants. It can happen, however, that persons with expired or withdrawn work permits (labour migrants) will be detained to enforce an expulsion order. Again, a precondition is that authorities assume that the alien may otherwise go into hiding, pursue criminal activities in Sweden, or in other ways tries to obstruct the removal. This provision also applies to irregular migrants, i.e. persons that are found to be illegally present on Swedish territory.

2.4 Children and vulnerable persons

If someone is assessed to not be suitable for detention, e. g. a woman in the final months of pregnancy and persons with special needs, they are not detained. When it comes to minors, unaccompanied or in families, specific rules apply limiting the conditions under which they can be detained. Detention is used only as a last resort and it is rare for vulnerable persons or minors to be put in detention.

According to Chapter 10, Section 1, 3rd paragraph, a child may not be separated from both its custodians by detaining the child or its custodian. A child that does not have a custodian in Sweden may only be detained if there are exceptional grounds.

A child may be detained when all of the following conditions are fulfilled:

- it is probable that the child will be refused entry with immediate enforcement or the purpose is to enforce a refusal-of-entry order with immediate enforcement,
- there is an obvious risk that the child will otherwise go into hiding and thereby jeopardise an enforcement that should not be delayed,
- it is not sufficient for the child to be placed under supervision.

A child may also be detained to enforce a refusal-of-entry order in other cases than above when the placement of the child under supervision has proved to be insufficient to enforce the order.

A child may not be detained for longer than 72 hours or, if there are exceptional grounds, for a further 72 hours. Children may never be transferred to a correctional institution, remand centre or police arrest facility.

2.5 Statistics on detention

Statistics are in general difficult to provide when it comes to detention. This is partly because different authorities, a regional police office or the Swedish Migration Board, can issue decisions on detention. It can occur that the same person is subject to a case handled by the police and later a case handled by the Migration Board, or vice versa. Apart from that, a person can be placed in, and taken out of, detention basically at any time during a migration-related process. Therefore, the same person may appear twice or more times in a database.

Table 1 below shows that the number of persons who have been placed in detention has increased throughout recent years, from 1,742 in 2009 to 2,893 in 2013. Rejected asylum applicants represented about 50% of all detainees in 2013. Persons subject to Dublin proceedings represent the second largest group.

Table 1: Number of third-country nationals in detention, per category

	2009	2010	2011	2012	2013	Remarks
Total number of third-country nationals in detention	1 742	1 810	1 941	2 564	2 893	
Number of third-country national applicants for international protection in ordinary procedures in detention	135	89	87	87	81	
Number of third-country national fast-track international protection applicants (accelerated international protection procedures) in detention	2	3	14	101	167	
Number of applicants for international protection subject to Dublin procedures in detention	487	594	545	798	1 239	
Number of rejected applicants for international protection in detention	1 248	1 211	1 374	1 640	1 454	
Number of rejected family reunification applicants in detention	0	0	0	0	0	Not applicable*
Number of other rejected applicants for residence permits on basis other than family reunification	5	2	8	25	33	Expired or withdrawn work permits
Number of persons detained to prevent illegal entry at borders in detention	n/a	n/a	n/a	n/a	524	Includes both illegal entry and illegally presence on territory.
Number of persons found to be illegally present on the territory who have not applied for international protection and are not (yet) issued a return decision in detention	n/a	n/a	n/a	n/a	n/a	Not available
Number of persons who have been issued a return decision in detention	n/a	n/a	n/a	n/a	n/a	Not available
Number of vulnerable persons part of the aforementioned categories of third-country nationals						
Vulnerable persons: minors	37	21	32	25	85	
Vulnerable persons: unaccompanied minors	1	4	4	18	14	
Number of other third-country nationals placed in immigration detention	n/a	n/a	n/a	n/a	n/a	No other categories are placed in detention

* There are no such statistics as applicants for family reunification normally have to apply from abroad, i.e. before they are even allowed to enter Sweden.

n/a = no data available

Source: Swedish Migration Board

2.6 Average time spent in detention

As Table 2 shows, the average length of time a person spends in detention in Sweden is relatively short. Since 2009, it also decreased from 13 days to 5 days. Persons in Dublin procedures, i.e. persons who have to leave Sweden to get their asylum applications examined in another country spend less time in detention than asylum applicants who are rejected. There are no comparable statistics for other groups of persons.

Table 2: Average length of time spent in detention

Average length of time in detention	2009	2010	2011	2012	2013
Average length of time in detention of all categories of third-country nationals in detention	13	11	10	7	5
Average length of time in detention of applicants for international protection subject to Dublin procedures	8	8	6	5	3
Average length of time in detention of rejected applicants for international protection	17	15	13	10	8

Source: Swedish Migration Board

3 Assessment procedures preceding detention orders

Before a third-country national is placed in detention, there is always an individual assessment to determine the appropriateness of detention. A general provision in the Aliens Act states that the Act is to be applied so as not to limit the freedom of aliens more than necessary in each individual case. This means, for example, that the health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern.

The Migration Board always assesses on an individual basis whether detention is reasonable or not. The guidelines of the Swedish Migration Board state that the Board should act openly towards a third-country national regarding enforcement measures such as detention. He or she will be informed about the reasons and consequences of a detention decision.

Those third-country nationals in the return procedure who have been sentenced to expulsion following a criminal conviction are normally not placed in a detention facility due to security reasons. They are normally instead placed in remand prisons run by the Swedish Prison and Probation Service.

The question whether supervision can be imposed on the alien as a less intrusive alternative to detention is always part of the individual assessment.

3.1 Competencies of national authorities and judicial authorities

The Swedish Migration Board, the Swedish police and the migration courts can all carry out assessments to determine the appropriateness of detention and decide whether to place a third-country national in detention. The migration courts can decide to place someone in detention of their own accord. When a person appeals against a detention decision, the migration court handles the appeal.

3.2 Challenges regarding assessment procedures

According to the experiences of the Swedish Migration Board, the assessment of any grounds for detention or supervision based on the risk of absconding is normally not problematic even if there is room for discretion in spite of objective criteria. Challenges arise, however, when it comes to extending the period of a third-country national in detention. Before detention is extended, the authorities have to consider whether any exceptional circumstances are at hand. The Aliens Act and the preparatory work concerning these provisions provide relatively little guidance on how authorities shall act in such cases and what constitutes exceptional circumstances. In addition, only a few cases related to extensions have been dealt with by the Migration Court of Appeal. Thus, even jurisprudence does not provide much guidance.

Further to this, it is also difficult to calculate the maximum duration of periods for detention or supervision, in particular when an authority makes a new decision on detention on new grounds rather than extending an already existing detention decision. The new Dublin Regulation,² setting its own maximum time periods and criteria for detention, has made the calculation of maximum durations for detention even more complicated.

Another challenge is the involvement of several competent authorities in the migration process. As

² Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

mentioned above, both the Swedish Migration Board, the police and the migration courts may issue decisions on detention and supervision. This requires close cooperation between the authorities since the same person may be the subject of several decisions issued by different actors in the course of the migration process.

3.3 Good practices regarding assessment procedures

It sometimes happens that the number of third-country nationals to be placed in detention exceeds the number of available places. As indicated above, there are only five detention centres in Sweden and the number of places there is very limited. When no places at detention centres are available, the Swedish Migration Board applies a certain order of priority in order to optimise the allocation of places.

The Migration Board's order of priority means that, in the first instance, cases where return decisions are practically enforceable will be prioritized for placement in detention, i.e. cases where sufficient travel documents are available, and cases which are handled under the Dublin Regulation. Return cases that are enforceable, but where travel documents are insufficient, represent the second priority. In such cases, there should be a possibility that in the near future sufficient travel documents will be available to carry out the execution of the deportation order.

The Swedish Migration Board uses this order of priority not only at times when there is a shortage of spots at detention centres, but also at other times. By doing so, the Migration Board can ensure that a third country national is not placed in detention when it is not absolutely necessary, or not placed in detention for a longer period than necessary.

Another good practice may be that the Swedish Migration Board does not make decisions for placement in detention if there is not an enforceable decision on removal. In such cases, supervision will be more reasonable to use than detention, and it will be used instead.

4 Types of detention facilities and conditions of detention

4.1. Types of detention facilities in Sweden

Detention centres in Sweden are specialized facilities run by the Swedish Migration Board. They are constructed and equipped especially for their purpose. There are five detention facilities in Sweden, located in the towns of Gävle, Märsta, Flen, Kålleröd and Åstorp. They are all in the southern half of Sweden and not far from the international airports in Stockholm, Gothenburg or Malmö. Together, they can provide accommodation for 235 persons.

The five Swedish detention facilities do not specialize on specific groups of detainees. All of them provide for separate sections for women.

Persons who are considered to constitute a security risk will not be placed in a detention centre but in a prison. Prisons may also be used instead of detention centres when a foreigner

- has been expelled due to a criminal offence,
- when he/she is being held in isolation and cannot for security grounds be kept in ordinary detention facilities, or
- when there are other exceptional grounds.

This only applies to adults; children cannot be placed in a prison instead of a detention facility. Persons that are detained in prisons should always be held separately from general prisoners. They should also be granted the facilities and privileges that can be permitted, taking into consideration good order and security in the institution, remand centre or police arrest facility. Detention in prison has sometimes raised concerns in Sweden, and investigations have shown that detainees are to a large extent treated the same as other inmates. For practical reasons, they are not always given all the facilities and benefits they are entitled to.

4.2 Conditions at detention facilities (Table)

The following Table provides an overview of how detention is organised in practice, how facilities are equipped and what conditions detainees will experience within these facilities.

Table 3: Overview of the conditions of detention in Sweden

Average available surface area per detainee (in square meters) in detention facilities	63 square meters per detainee
Average number of detainees placed in one room per detention facility	Single rooms are only available at detention facilities in Märsta and Flen. Normally, the number of detainees placed in one room varies from 2-4 persons. There are also rooms for 6 persons but they are seldom fully occupied
Accommodation for families	Families are normally placed in their own room with 4 beds. Common areas, like canteen, TV room and gym are the same for families as for other detainees
Children in detention facilities	<p>Children are normally placed with their parents. There are no childcare facilities at detention centres. In some cases, detention centres are located close to an open accommodation/reception centre. In those cases it is possible to accommodate one of the parents together with the child in the open accommodation centre, while the other parent is being detained.</p> <p>Also, instead of placing an entire family in detention, sometimes only one parent is detained and the rest of the family remains in other (open) accommodation</p>
Detention of single women	Single women are placed in a special ward or group of rooms that is designated for women only
Detention of single women	Single women are placed in a special ward or group of rooms that is designated for women only
Detention of unaccompanied minors	Unaccompanied minors are placed separately from adult detainees, but they can share common areas with other detainees if they choose to
Access to outdoor space	At all detention centres, the detainees have the possibility to be outside in a yard at least 3 hours per day. At the detention facility in Flen, detainees have access to outdoor space as they wish at any time between 7 a.m. and 4 p.m. per day
Visitors	<p>Detainees shall be given the opportunity to receive visits and have contacts with persons outside the premises except if the visit or contact would hamper activities concerning the detention in a particular case. If necessary for reasons of security, a visit may be monitored. A visit by a public counsel or a lawyer who is a member of the Swedish Bar may only be monitored if the counsel or the lawyer personally requests this.</p> <p>In the background material of the Swedish Aliens Act it is emphasized that the will of the legislator is that detainees should be able to receive visits, call, write, and in various ways have virtually unlimited contact with people, NGOs, communities and authorities outside the premises.</p> <p>NGOs that wish to visit a detainee should notify the respective detention facilities of their intent. Such visits should be granted unless a visit for some practical reason is not possible. Detention facilities should always try to allow visits as far as possible</p>

Contact with the outside world via telephone, mail, e-mail, internet	Detainees are allowed to communicate by mail, e-mail and telephone with the outside world. To protect the privacy and integrity of other detainees, mobile phones with cameras are not allowed, but there is the possibility to borrow a phone without camera during the time in detention. Mail is not examined unless there is reason to suspect that it contains prohibited items, like lighters, drugs, knives etc. and then only in the presence of the detainee. Detainees also have access to the internet without limitations
Access to education (e.g. school courses for minors, language classes)	Whenever possible, and depending on available staff, access to education and related activities is granted. Other activities, such as painting, drawing etc., are always organised depending on interest
Access to leisure activities	Detention facilities are equipped with a TV room, board games, pool tables, a gym, a table tennis table and/or other equipment. Depending on the facility, access to such activities is possible either at any time or according to a schedule. There are also multi-religious/neutral prayer-rooms with access to religious literature.
Opportunities to leave a detention facility and freedom of movement within detention centres	Detainees can move freely within each facility, except for men to enter women's quarters. Persons in detention can leave the detention if they need to go to a hospital or for other urgent reasons, but under supervision.
Access to legal advice / assistance	<p>Detainees have access to free legal advice. The Swedish Aliens Act states that a public counsel shall be appointed for the person whom the measure concerns, unless it must be assumed that there is no need for a counsel.</p> <p>If a third-country national has been held for more than three days in detention in connection with an enforcement of a refusal-of-entry or expulsion order, a counsel should normally be appointed.</p> <p>A legal counsel should always be appointed in cases concerning unaccompanied minors</p>
Language support (translation/interpretation services)	Detainees are not entitled per se to translation services, but detention staff tries to facilitate this whenever possible by helping with translations. Detainees are entitled to interpretation services in connection to medical treatments and in connection to meetings and interviews regarding their migration case. Interpreters are also used when a particular need arises, e.g. when a detainee is distressed and needs to talk

<p>Medical care</p>	<p>Detainees shall have access to the same level of health and medical care as a person who has applied for asylum or international protection even if the alien has not applied for such a permit.</p> <p>If a detainee needs hospital care during the period of detention, he or she shall be given the opportunity for such treatment.</p> <p>Health and medical care is covered if it cannot be deferred, which includes care and treatment of diseases and injuries in cases where even a moderate delay can be expected to result in serious consequences for the patient.</p> <p>Detainees pay SEK 50 (about 5 euros) for visits to doctors in the public primary care and for the medical treatment given after referral of such physician. This fee also applies to appointments.</p> <p>Preventive child and maternity care and care according to the Swedish Communicable Diseases Act are completely free of charge. According to local arrangements, detention facilities provide detainees with the possibility to meet a nurse who regularly visits the facility</p>
<p>Arrangements for persons considered to be security risks for others and/or themselves</p>	<p>An adult can be separated from other detainees if it is necessary for safety reasons. He or she is then placed in a locked room or another separated part of a detention centre. The decision to separate someone should be reassessed as soon as needed, but at least every third day. If the detainee poses a danger to himself or herself, a doctor should examine him or her.</p> <p>One Swedish detention centre has a small room for this purpose and another detention has a separate area consisting of three rooms, bathroom and a separate outdoor area.</p> <p>If it is not possible to separate a detainee from the others, they can be placed temporarily in remand prison.</p>

4.3 Costs of detention

The Swedish Migration Board continuously monitors the costs incurred by the placement of foreigners in detention, see Table 4 below. The possibility to adjust them, however, is limited since a certain standard must be maintained and the premises used for detention cannot easily be substituted by others due to their highly specialised nature.

In 2013, the cost of one day in detention (per person) was on average SEK 3,782 (approx. 420 €).

Table 4: Costs of detention in Sweden, 2013

Detention costs 2013	SEK	EUR
Staffing costs	195 000 000	20 700 000
Medical costs	3 800 000	404 000
Food and accommodation costs	47 800 000	5 100 000
Legal assistance	630 000	67 000
Other costs, including any additional costs that do not fall into the categories above e.g. costs of technical tools etc.	22 500 000	2 400 000
Total costs	270 000 000	28 700 000

Source: Swedish Migration Board

5 Alternatives to detention

As a less intrusive alternative to detention, Swedish authorities may impose reporting obligations on a foreigner. This measure is called supervision. Supervision means that an alien is obliged to report to the nearest police authority or to the Swedish Migration Board on a regular basis. A supervision order may also require the alien to surrender his or her passport or other identity document.

5.1 Supervision

Supervision can be imposed on any of the categories of persons that can also be subject to a detention decision. However, when considering supervision (as a less constraining alternative to detention), the authorities must take into account any risk of absconding. When there is a serious risk of absconding, detention will often be considered more appropriate. According to the statistics of the Swedish Migration Board, detention occurs more often than supervision. The risk of absconding may be the reason for that. However, for vulnerable persons who are dependent on specific housing arrangements or the availability of medical treatment, for example, supervision is more suitable than detention.

In the same way as detention, supervision is considered to be a form of deprivation of personal liberty – although a less severe one. Deciding authorities are the Swedish Migration Board (in most cases), the police and the migration courts. When a foreigner does not comply with the conditions of supervision, the deciding authority may impose detention instead. The advantages of supervision, as compared to detention, are apart from the fact that it is a less severe interference with the personal liberty of a foreigner, also the fact that it incurs minimal costs and less administrative burdens. While there are only five detention centres across Sweden, the reporting duties that supervision involves can be imposed almost anywhere in the country.

The grounds on which a supervision decision may be based are largely the same as for detention decisions. Among other reasons, supervision may be imposed to ensure that an expulsion or removal order can be carried out, or to facilitate the establishment of the identity of a foreigner.

Apart from supervision, there are no established alternatives to detention in Sweden.

5.2 Statistics on alternatives to detention (supervision)

In 2013, a total of 405 were subject to supervision in Sweden, see Table 5 for details. This figure represents a significant increase as compared to earlier years. In 2009, only 288 were imposed such reporting obligations. Most persons that were subject to supervision in 2013 were persons with rejected asylum applications (275).

Table 5: Number of third-country placed under supervision

	2009	2010	2011	2012	2013
Total number of third-country nationals provided alternatives to detention	288	270	289	396	405
Number of third-country nationals applicants for international protection in ordinary procedures provided alternatives to detention	n/a	n/a	n/a	n/a	n/a
Number of third-country nationals fast-track international protection applicants (accelerated international protection procedures) provided alternatives to detention	2	6	n/a	32	12

Number of international protection applicants subject to Dublin procedures provided alternatives to detention	37	72	42	72	90
Number of rejected applicants for international protection provided alternatives to detention	178	160	220	269	275
Number of rejected applicants for family reunification provided alternatives to detention *	0	0	0	0	0
Number of other rejected applicants for residence permits on basis other than family reunification	n/a	n/a	n/a	n/a	n/a
Number of persons found to be illegally present on the territory (i.e. such as those who have not applied for international protection and are not (yet) been issued a return decision) provided alternatives to detention	118	127	119	146	115
Number of persons issued a return decision provided alternatives to detention	n/a	n/a	n/a	n/a	n/a
Number of persons who have been issued a return decision in detention	n/a	n/a	n/a	n/a	n/a
Number of vulnerable persons part of the aforementioned categories of third-country nationals					
Vulnerable persons specified - minors	20	29	15	30	20
Vulnerable persons specified – unaccompanied minors	2	n/a	1	1	1
Number of other third-country nationals provided alternatives to detention	n/a	n/a	n/a	n/a	n/a

* There are no such statistics as applicants for family reunification normally have to apply from abroad, i.e. before they are even allowed to enter Sweden.

n/a = no data available

Source: Swedish Migration Board

6 Evaluations and debates regarding detention

6.1 Fundamental rights concerns

Since detention constitutes a deprivation of liberty, it is sometimes debated and under scrutiny. The Swedish Red Cross, for example, has been studying the legal safeguards for asylum seekers in detention.³ The study concluded that the decision-making authorities do not apply the principle of proportionality adequately. Proportionality means that authorities should refrain from taking a burdensome decision if the negative consequences for the individual are not in proportion to the public interest to be met.

In 2009-2011, a governmental inquiry has undertaken a review of the rules on detention imposed by the Aliens Act.⁴ The final report of the enquiry, published in 2011, proposed clarifications of existing law, a compulsory judicial review of decisions on detention, and higher demands on the Migration Board to be able to separate a person from other detainees when needed. The report has not yet led to any changes in legislation.

6.2 Complaints lodged with the Parliamentary Ombudsmen

The level and intensity of scrutiny can also be assessed by looking into the number of complaints lodged with the Parliamentary Ombudsmen concerning alleged human rights violations caused by detention.⁵ However, the number of complaints concerning detainees or persons under supervision is not easily available. For 2013, 30 complaints is a rough estimate. There was only one complaint in 2013 that led to the Ombudsmen issuing official criticism. In that case a public counsel had asked to speak privately with his client before a detention hearing at the border police, but had been denied this on safety grounds. The Parliamentary Ombudsmen state in their decision that a detainee shall always have the opportunity to consult privately with his or her public counsel. The police authority was therefore criticized for not being able to provide for this.

6.3 Appeals

As far as appeals against decisions regarding detention are concerned, 552 such appeals were lodged during 2013. 24 of these appeals led to the Swedish Migration Board reconsidering detention decisions. All other cases, 528, were turned over to the Migration Courts. The Migration Courts judged in favour of the plaintive in 27 out of these cases.

3 Svenska Röda Korset (2012): *Förvar under lupp*, Stockholm.

4 Statens Offentliga Utredningar (2011): *Förvar – Slutbetänkande av Förvarsutredningen*, Stockholm, SOU 2011:17.

5 The Swedish Parliamentary Ombudsmen (JO) are appointed by the Riksdag (Parliament) to ensure that public authorities and their staff comply with the laws and other statutes governing their actions. They are completely independent in their decisions. The Ombudsmen are specifically tasked with ensuring that public authorities and courts abide by the provisions of the Instrument of Government concerning impartiality and objectivity and that the public sector does not infringe on the basic freedoms and rights of the citizens. The ombudsmen's supervision includes ensuring that public authorities deal with their cases and in general carry out their tasks in accordance with existing legislation. A complaint to the Parliamentary Ombudsmen can be made by anybody who feels that he or she or someone else has been treated wrongly or unjustly by a public authority or an official employed by the civil service or local government.

6.4 Compliance and absconding

In 2013, a total of 2,864 persons were detained for shorter or longer periods of time in Sweden. According to the Swedish Migration Board, 41 persons avoided their placement in detention, i.e. they absconded. This equals to a rate of absconding of approximately 1.4 %. There are no comparable figures for supervision, i.e. persons who do not comply with requirements to regularly report to the Swedish Migration Board or Police. Thus, any evaluation regarding the effectiveness and use of supervision is not possible. There are also no evaluations of the effectiveness of detention with regard to facilitated return or removal of persons who have to leave the country, or of enforcing the determination of undisclosed identities.

7 Concluding observations

Detention and supervision are coercive measures in the form of a deprivation of liberty, or a restriction of liberty, respectively. Both measures are used for several objectives, most importantly to facilitate an investigation of a person's right to stay in Sweden or to ensure that a return decision can be enforced. Thus, detention and supervision are procedural safeguards within the migration and asylum process.

Sweden received more than 54,000 asylum seekers in 2013, and about 21,000 of them were rejected or subject to a Dublin transfer decision. A total of 2,864 persons were placed in detention during the same year. That number also includes persons detained by the police after being detected on the territory without a residence permit or visa. When compared to the overall size of recent migration flows to and from Sweden, detention appears to be used in rather small scale. Apart from this finding, this study does not deliver any conclusions regarding the effectiveness of detention or supervision.

As far as the conditions of detention are concerned, a foreigner who is detained stays in premises especially arranged for this purpose. These premises shall as far as possible resemble the premises offered in regular reception units with the difference that the foreigner cannot leave the premises. The Swedish Migration Board takes both financial and operational responsibility for these facilities, but they are also used for persons that are subject to a detention decisions issued by the police. The Swedish detention facilities can accommodate 235 persons at the same time.

According to the Migration Board, detention facilities are designed in the most transparent and humane way possible. In principle, only the front doors are locked and detainees can move freely within the premises. The facilities also provide relatively good living conditions, e.g. with the possibility of some privacy, access to outdoor space as well as leisure activities. Health care is provided and detainees can receive visitors.

The grounds for placing someone in detention are regulated in the Aliens Act. The Aliens Act also contains rules about how long a person may be detained, how a decision on detention shall be taken, possibilities to appeal a decision, and how detainees should be treated. There are three grounds for detention; examining and establishing the identity of an alien, examining the right of the alien to enter or stay in the country and detention in order to prepare and execute an order of refusal of entry or expulsion. The last ground is the most widely used in practice, and it is especially relevant when there is otherwise a risk that the alien will engage in criminal activities in Sweden, abscond or impede the enforcement of a refusal of entry or an expulsion.

In Sweden there is only one alternative to detention and that is supervision. Supervision means that an alien is obliged to regularly report to the local police authority or to the Swedish Migration Board. A supervision order may also require the alien to surrender his passport or other identity documents. In practice, supervision is used little in comparison with detention despite the fact that the competent authorities are required to consider supervision as a first measure before resorting to detention.

About the EMN

The European Migration Network (EMN) is an EU funded network, set up with the aim of providing up-to-date, objective, reliable and comparable information on migration and asylum for institutions of the European Union, plus authorities and institutions of the Member States of the EU, in order to inform policymaking. The EMN also serves to provide the wider public with such information. The EMN was established by Council Decision 2008/381/EC adopted on 14 May 2008. The Swedish Migration Board is the Swedish National Contact Point (NCP) for the EMN.

Migrationsverket • 601 70 Norrköping

phone +46 (0)771-235 235 • e-mail emn@migrationsverket.se

www.migrationsverket.se • www.emnsweden.se



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